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12 Attorneys for GOOGLE INC.

13  
14 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN JOSE DIVISION**

16 GOOGLE INC., AOL LLC, YAHOO! INC.,  
IAC SEARCH & MEDIA, INC., and  
17 LYCOS, INC.

18 Plaintiffs,

19 v.

20 L. DANIEL EGGER,  
SOFTWARE RIGHTS ARCHIVE, LLC, and  
21 SITE TECHNOLOGIES, INC.

22 Defendants

Case No. CV08-03172-RMW

**FIRST DECLARATION OF THOMAS B. WALSH, IV IN SUPPORT OF PLAINTIFFS GOOGLE INC., AOL LLC, IAC SEARCH & MEDIA, INC., AND LYCOS, INC.'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, TRANSFER, OR STAY UNDER THE FIRST-TO-FILE RULE, UNDER RULE 12(B)(2) FOR LACK OF PERSONAL JURISDICTION, AND UNDER RULE 12(B)(1) FOR LACK OF SUBJECT MATTER JURISDICTION**

CERTAIN EXHIBITS FILED UNDER SEAL

Hearing Date: August 21, 2009  
Hearing Time: 9:00 am  
Courtroom: 6 (4th Floor)  
26 Judge: Hon. Ronald M. Whyte

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- 1           1.       I, Thomas B. Walsh, IV declare as follows:
- 2           2.       I am an attorney admitted to practice in the State of Texas and I am a principal in
- 3 the law firm of Fish & Richardson P.C. I represent Plaintiffs Google Inc. and AOL LLC in this
- 4 action and have been admitted *pro hac vice* in this action. I submit this declaration in support of
- 5 Google Inc., AOL LLC, IAC Search & Media, Inc., and Lycos, Inc.'s Opposition to Defendants'
- 6 Motion to Dismiss, Transfer, or Stay Under the First-to-File Rule, Under Rule 12(b)(2) for Lack
- 7 of Personal Jurisdiction, and Under Rule 12(b)(1) for Lack of Subject Matter Jurisdiction. Except
- 8 as otherwise stated, I have personal firsthand knowledge of the matters set forth in this
- 9 Declaration, and if called as a witness I would testify competently to those matters.
- 10          3.       Attached to this declaration as **Exhibit A** is a true and correct copy of a Site
- 11 Technologies, Inc. Stock Exchange Agreement ("Stock Exchange Agreement") as obtained from
- 12 Global Securities Information, Inc.
- 13          4.       Attached to this declaration as **Exhibit B** are true and correct excerpts from the
- 14 September 30, 2008 deposition of Jeffery Franklin Ait ("Ait Depo") [FILED UNDER SEAL] ,
- 15 with highlighting added.
- 16          5.       Attached to this declaration as **Exhibit C** is a true and correct copy of Site
- 17 Technologies, Inc.'s Bill of Sale, Assignment, and License Agreement, dated September 15, 1998
- 18 ("1998 Bill of Sale"), as obtained from the United States Patent and Trademark Office.
- 19          6.       Attached to this declaration as **Exhibit D** are true and correct excerpts from the
- 20 October 2, 2008 deposition of Daniel Egger ("Egger Depo I") with errata [FILED UNDER
- 21 SEAL], with highlighting added.
- 22          7.       Attached to this declaration as **Exhibit E** is a true and correct copy of the Debtor's
- 23 First Amended Plan of Reorganization dated April 25, 2000 from Site Technologies, Inc.'s
- 24 bankruptcy proceeding in the Northern District of California (Case No. 99-50736-JRG-11).
- 25          8.       Attached to this declaration as **Exhibit F** is a true and correct copy of an Order
- 26 Confirming Debtor's First Amended Plan of Reorganization dated June 15, 2000 from Site
- 27 Technologies, Inc.'s bankruptcy proceeding in the Northern District of California (Case No. 99-
- 28

1 50736-JRG-11).

2 9. Attached to this declaration as **Exhibit G** is a true and correct copy of a Certificate  
3 of Ownership Merging Site/Technologies/Inc. into Site Technologies, Inc. dated December 29,  
4 2000 from the California Secretary of State.

5 10. Attached to this declaration as **Exhibit H** is a true and correct copy of a Certificate  
6 of Ownership Merging Site/Technologies/Inc. into Site Technologies, Inc., filed with the  
7 Delaware Secretary of State on December 29, 2000.

8 11. Attached to this declaration as **Exhibit I** is a true and correct copy of the Final  
9 Decree dated January 6, 2004 from Site Technologies, Inc.'s bankruptcy proceeding in the  
10 Northern District of California (Case No. 99-50736-JRG-11).

11 12. Attached to this declaration as **Exhibit J** is a true and correct copy of the  
12 Certificate of Incorporation of Software Rights Archive, Inc., filed with the Delaware Secretary of  
13 State and dated January 7, 2004, with highlighting of the file stamp date.

14 13. Attached to this declaration as **Exhibit K** is a true and correct copy of a document  
15 bates labeled EGG\_0000066-68, as produced by Software Rights Archive LLC [FILED UNDER  
16 SEAL].

17 14. Attached to this declaration as **Exhibit L** is a true and correct copy of a document  
18 titled "Assignment of Patent" and dated February 11, 2005 with its recordation coversheet, as  
19 obtained from the United States Patent and Trademark Office.

20 15. Attached to this declaration as **Exhibit M** is a true and correct copy of a document  
21 titled "Assignment of Patent" and dated February 22, 2005 with its recordation coversheet, as  
22 obtained from the United States Patent and Trademark Office.

23 16. Attached to this declaration as **Exhibit N** is a true and correct copy of Plaintiff  
24 Software Rights Archive, LLC's Rule 7.1 Disclosure dated November 21, 2007 in the Texas  
25 Action, Civil Action No. 2:07-cv-511 (CE) (E.D. Tex.) (hereinafter "Texas Action").  
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1           17.     Attached to this declaration as **Exhibit O** is a true and correct copy of a document  
2 bates labeled EGG\_ND\_0000164-172 and 0000175-176, as produced by Software Rights Archive  
3 LLC. [FILED UNDER SEAL].

4           18.     Attached to this declaration as **Exhibit P** is a true and correct copy of the Status  
5 Conference Statement by Software Rights Archive, LLC dated December 16, 2008 in Site  
6 Technologies, Inc.'s bankruptcy proceeding in the Northern District of California (Case No. 99-  
7 50736-RLE).

8           19.     Attached to this declaration as **Exhibit Q** are true and correct excerpts from a  
9 December 17, 2008 hearing transcript from Site Technologies, Inc.'s bankruptcy proceeding in the  
10 Northern District of California (Case No. 99-50736-RLE) ("Bankr. Tr.").

11           20.     Attached to this declaration as **Exhibit R** is a true and correct copy of a document  
12 bates labeled STI\_0011611-613, as produced by Software Rights Archive, LLC [FILED UNDER  
13 SEAL].

14           21.     Attached to this declaration as **Exhibit S** is a true and correct copy of a document  
15 bates labeled EGG\_0000668-670, as produced by Software Rights Archive, LLC [FILED UNDER  
16 SEAL].

17           22.     Attached to this declaration as **Exhibit T** are true and correct copies of the  
18 Declarations of Christopher W. Day, Donald Frisbie, Adam L. Barea, Arnabnil Bhattacharjee and  
19 Kevin Baillie, filed on February 20, 2009 in the Texas Action [FILED UNDER SEAL].

20           23.     Attached to this declaration as **Exhibit U** are true and correct excerpts from the  
21 Disclosures of Plaintiff Yahoo! Pursuant to FRCP 26(a)(1) and Plaintiff Google Inc.'s Initial  
22 Disclosures Pursuant to Federal Rule of Civil Procedure 26(A)(1) dated December 29, 2008  
23 [FILED UNDER SEAL].

24           24.     Attached to this declaration as **Exhibit V** are true and correct excerpts from the  
25 January 27, 2009 deposition of Daniel Egger. ("Egger Depo II") [FILED UNDER SEAL], with  
26 highlighting added.

27           25.     Attached to this declaration as **Exhibit W** are true and correct excerpts from  
28

1 Plaintiff Software Rights Archive, LLC's Disclosure of Asserted Claims and Infringement  
2 Contentions served on October 31, 2008 in the Texas Action.

3 26. Attached to this declaration as **Exhibit X** are true and correct excerpts from Notice  
4 of Allowability from US Serial No. 08/649,304 and an Office Action dated July 19, 2000 from  
5 U.S. Serial No. 09/071,120, with highlighting added.

6 27. Attached to this declaration as **Exhibit Y** is a true and correct excerpt from  
7 Software Rights Archive, LLC's Objections and Response to Defendants' First Set of Common  
8 Interrogatories (Nos. 1-9) served on January 5, 2009 in the Texas Action.

9 28. Attached to this declaration as **Exhibit Z** is a true and correct copy of a web page  
10 entitled "Trusted, Objective Source for Software Code History" at srarchive.com as obtained from  
11 the Internet archive, webarchive.org.

12 29. Attached to this declaration as **Exhibit AA** is a true and correct copy of a Whois  
13 web page available at <http://whois.domaintools.com/srarchive.com> regarding srarchive.com, with  
14 highlighting added and a true and correct copy of the top portion of the web page available at  
15 <http://www.lunarpages.com/contact/>.

16 30. Attached to this declaration as **Exhibit BB** is a true and correct copy of a document  
17 bates labeled SRA\_0000364, as produced by Software Rights Archive LLC, with highlighting  
18 added [FILED UNDER SEAL].

19 31. Attached to this declaration as **Exhibit CC** is a true and correct copy of an email  
20 bates labeled EGG\_ND\_0000011, with highlighting added and redaction of user id and password  
21 information [FILED UNDER SEAL].

22 32. Attached to this declaration as **Exhibit DD** are true and correct excerpts from the  
23 May 22, 2009 deposition of Russell Barron and errata [FILED UNDER SEAL], with highlighting  
24 added.

25 33. Attached to this declaration as **Exhibit EE** is a true and correct copy of a document  
26 bates labeled STI\_0011614, as produced by Software Rights Archive LLC [FILED UNDER  
27 SEAL].

1           34.     Attached to this declaration as **Exhibit FF** are true and correct copies of 1998 and  
2 1999 Site/Technologies/Inc. U.S. Federal Corporation Income Tax Returns, as produced by  
3 counsel for Software Rights Archive LLC [FILED UNDER SEAL].

4           35.     Attached to this declaration as **Exhibit GG** is a true and correct copy of Exhibit 8  
5 from Dkt. No. 76 in the Texas Action, which is an excerpt of a document titled “Noncompetition  
6 Agreement” with highlighting from the exhibit.

7           36.     Attached to this declaration as **Exhibit HH** is a true and correct of a document  
8 bates numbered SRA\_0000180-182, as produced by Software Rights Archive LLC [FILED  
9 UNDER SEAL].

10          37.     Attached to this declaration as demonstrative **Exhibit II** is a table regarding the  
11 chain of title of the asserted patents.

12          38.     Attached to this declaration is **Exhibit JJ** is a true and correct copy of a Statement  
13 of Information for Site Technologies, Inc. dated August 1, 2008 as filed with the California  
14 Secretary of State.

15          39.     Attached to this declaration as **Exhibit KK** is a true and correct copy of a  
16 document, bates labeled ACP001 – 004, with highlighting added. [FILED UNDER SEAL].

17          40.     Attached to this declaration as **Exhibit LL** are true and correct excerpts from the  
18 October 1, 2008 deposition of J. Christopher Lynch [FILED UNDER SEAL], with highlighting  
19 added.

20          41.     Attached to this declaration as **Exhibit MM** are true and correct excerpts of various  
21 IP seminar brochures printed from the internet for seminars which occurred in California, with  
22 highlighting added.

23          42.     Attached to this declaration as **Exhibit NN** are true and correct copies of Altitude  
24 Capital Partners webpages, as accessed at [www.altitudecp.com/board.html](http://www.altitudecp.com/board.html) and  
25 [www.altitudecp.com/portfolio.html](http://www.altitudecp.com/portfolio.html), with highlighting added.

26          43.     Attached to this declaration as **Exhibit OO** is a true and correct copy of an Altitude  
27 Capital Partners press release entitled “Altitude Capital Partners Names Former Apple Computer  
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1 & National Semiconductor Chief IP Counsel Irving Rappaport to its Advisory Board.”

2 44. Attached to this declaration as **Exhibit PP** is a true and correct copy of a  
3 Declaration of William Marino dated July 23, 2009 [FILED UNDER SEAL].

4 I declare under penalty of perjury that the foregoing is true and correct. Executed this 24<sup>th</sup>  
5 day of July, 2009, at Dallas, Texas.

6  
7 /s/ Thomas B. Walsh, IV  
8 Thomas B. Walsh, IV  
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